IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORMA AVELLA PRESS	:	
	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 01-959
	:	
LARRY G. MASSANARI Commissioner of the Social Security Administration	:	
	:	
	:	
Defendant.	:	

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MEMORANDUM AND ORDER

YOHN, J. JANUARY ____, 2002

Pursuant to 42 U.S.C. § 405(g), plaintiff Norma Avella Press ("Press") seeks judicial review of the decision of the Commissioner of Social Security ("Commissioner"), in which she was found disabled as of December 31, 1990. Press does not challenge the Commissioner's findings of her particular disability or its onset date; rather, Press contends that in considering her February 1993 application for disability insurance benefits ("DIB"), the Administrative Law Judge ("ALJ") conducted a de facto reopening of her August 1990 DIB application, which had previously been denied.

Press and the Commissioner both move for summary judgment. These motions were referred to a magistrate judge, who recommended that Press's motion for summary judgment be denied and the Commissioner's motion be granted. Press filed objections to the report and

recommendation. In her objections, Press takes issue with the magistrate judge's finding that the social security regulations prohibited a reopening of Press's claim and contends that the actions of the ALJ amounted to a de facto reopening of her first application for benefits. Because the governing regulations do not prohibit a reopening of Press's claim, and because the ALJ reviewed Press's entire medical record in considering her 1993 DIB application, I find that there has been a de facto reopening of Press's 1990 DIB application. As a result, I will grant plaintiff's motion for summary judgment and remand this action for a calculation of the retroactive benefits owed to plaintiff.

BACKGROUND

On August 20, 1990, plaintiff, Norma Avella Press, filed an application for DIB, which was denied on November 26, 1990. There is no indication that Press appealed this denial of benefits.[1] Rather, on February 5, 1993, Press reapplied for DIB and Social Security Income, claiming a disability onset date of December 31, 1990. On this application, Press noted that she had previously filed another DIB application with the Social Security Administration. Press's application was denied initially and upon reconsideration.

On March 3, 1994, Press formally requested an ALJ hearing. Press retained counsel on September 27, 1995. The required "Appointment of Representative" form was stamped with the word "REOPENING," indicating that Press sought the ALJ to reconsider her first application on its merits during the hearing on her second application. A few days after the administrative

[1] The defendant has not produced the filefolder from Press's first application, and therefore it is uncertain as to whether Press appealed the denial of her 1990 DIB application.

hearing on October 27, 1995, Press's counsel sent the ALJ a letter that highlighted the "potential 'reopening'" issue in Press's DIB claim. Doc. 5, Ex. B. The ALJ considered the case de novo on October 25, 1995 and on December 23, 1995 the ALJ determined that Press "ha[d] been under a 'disability,' as defined in The Social Security Act, since December 31, 1990." Finding # 12. The ALJ's decision does not mention Press's earlier claim or the reopening issue.

After the ALJ's "fully favorable" decision was rendered, Press's counsel faxed the ALJ a letter concerning the decision's failure to address the reopening issue. Doc 5, Ex. C. The ALJ did not respond to this letter. As a result, on March 18, 1996, Press requested that the Appeals Council review the ALJ's decision. Ultimately, on January 5, 2001, the Appeals Council denied her request for review. This timely federal appeal followed.

STANDARD OF REVIEW

The report and recommendation of a magistrate judge is reviewed de novo. 28 U.S.C. § 636(b)(1)(C)(2001). I have the option to accept, reject or modify, in whole or in part, the magistrate judge's findings or recommendations. *Id.*

DISCUSSION

I. Legal Considerations

The decision of the ALJ refusing to reopen a claimant's petition for benefits is generally not subject to judicial review. *Califano v. Sanders*, 430 U.S. 99 (1977). However, there is an exception to this general rule when "the administrative process does not address an earlier decision, but instead reviews the entire record in the new proceeding and reaches a decision on

the merits." *Kane v. Heckler*, 776 F.2d 1130, 1132 (3d Cir. 1985). In such circumstances, a de facto or constructive reopening of the claimant's application is deemed to have occurred. *Id.* Thus, although an ALJ's decision not to reopen an earlier claim is not judicially reviewable, when an ALJ does not explicitly decline to reopen an earlier claim, a court may examine the record to determine whether there was a de facto reopening of the earlier DIB application.[2] *Coup v. Heckler*, 834 F.2d 313, 317 (3d Cir. 1987).

A. ALJ's Conduct at the Hearing on Press's Second DIB Application

In support of her de facto reopening argument, Press cites the Third Circuit cases of *Coup v. Heckler*, 834 F.2d 313 (3d Cir. 1987) and *Purter v. Heckler*, 771 F.2d 682 (3d Cir. 1985). In both cases, the Third Circuit held that in considering an application for benefits, the Secretary[3] constructively reopened the claimant's earlier application.

In *Purter v. Heckler*, the Third Circuit found that by receiving evidence that predated the claimant's final DIB application and in conducting a hearing on the merits of the claimant's disability claim, the ALJ reopened the record for reconsideration of all past claims. 771 F.2d 682, 692-93 (3d Cir. 1995). In holding that a de facto reopening had occurred, the Third Circuit also

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[2] On October 18, 1996, the ALJ wrote Press a letter declining to reopen her case. As this express denial came almost one year after the October 23, 1995 hearing on Press's 1993 DIB application and after this action was no longer within the jurisdiction of the ALJ because it had been appealed to defendant's Appeals Council, it does not prevent this court from considering whether the ALJ's actions at this hearing reopened Press's 1990 DIB application. Doc. 12, Ex. 1.

[3] Until March 31, 1995 when the Social Security Administration became an independent agency, the Secretary of Health and Human Services was the named respondent in all Social Security appeals. Social Security Independence and Program Improvement Act, Pub. L. No. 103-296, 108 Stat. 1464, 1477, § 106(d)(2).

found it relevant that in considering the claimant's most recent DIB application, the ALJ did not apply or mention res judicata principles. *Id*. at 693, 695. The court stated that a when "a subsequent claim reveals evidence that would warrant a reopening of any earlier claims, and the Secretary has reviewed the entire claim and has rendered a final decision on the merits after a hearing, a reviewing court is not precluded from finding that a reopening has occurred." *Id.* at 693. Since there was good cause for reopening plaintiff's earlier claims and the ALJ reconsidered plaintiff's claims on the merits, the Third Circuit found that there was a de facto reopening of the prior claims.[4] *Id.* at 696. Similarly, in *Coup v. Heckler*, the Third Circuit found support for its decision that there was a de facto reopening of an earlier-filed DIB application in the ALJ's consideration of evidence dating back to the claimant's earlier DIB application and the ALJ's failure to rely on res judicata principles or to limit his review of the claimant's application to after a particular date. 834 F.2d 313, 316-18 (3d Cir. 1987). By failing to address an earlier decision while reviewing the entire record and reaching a decision on the merits of plaintiff's subsequent claim for benefits, the court held that the ALJ's conduct amounted to a de facto reopening of the earlier disability claim. *Id.* at 317.

These Third Circuit precedents instruct this court that there is plainly a de facto reopening here. At no point during the October 1995 administrative proceeding or in his December 23, 1995 decision did the ALJ indicate that administrative res judicata would apply to bar consideration of Press's first application nor did the ALJ limit his review of Press's disability claim to evidence of events after November 26, 1990, the date her first application was denied.

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[4] The "good cause" requirement is met when a claimant presents new evidence to support his claim for benefits. *Purter*, 771 F.2d at 694 n. 11. The defendant does not dispute that Press had good cause for reopening her claim for benefits.

Indeed, the evidence the ALJ reviewed in coming to his decision indicates that the ALJ considered the entire administrative record and reconsidered Press's claim on the merits. Because the ALJ considered his decision that Press was disabled and entitled to benefits as of December 31, 1990 to be "fully favorable" to Press, the ALJ found a "full evaluation and discussion of the evidence" to be unnecessary. Instead, the ALJ simply listed the evidence that he found credible and probative of Press's disability. Specifically, the ALJ decision references an October 1988 vascular test, a March 1990 discharge summary from the Medical College of Pennsylvania and a July 1990 inpatient hospital record. The ALJ's review of this evidence, which predated Press's August 1990 DIB application, demonstrates that the ALJ considered Press's entire medical record, including the period previously adjudicated, when he reviewed her second claim for benefits. Thus, based on the ALJ's conduct at the October 1995 hearing, I will find a de facto reopening of Press's prior disability claim.[5]

B. Difference in the Claimed Disability Onset Dates of Press's DIB Applications

[5] As indicated in the magistrate judge's report and recommendation, the ALJ's review of a claimant's medical records does not mandate a finding that a previous claim has been constructively reopened. *Robertson v. Sullivan*, 979 F.2d 623, 625 (8th Cir. 1992). Such a complete review of the records may be necessary in order to assess whether the claimant was disabled at the alleged disability onset date or for purposes of retroactive DIB eligibility, within the twelve months preceding the filing of the most recent application. *Coup*, 834 F.2d at 317. The evidence considered in this case indicates that the ALJ did not review Press's medical records for the purpose of establishing her disability on either of these relevant dates. The ALJ's consideration of evidence dating more than twelve months before Press's 1993 application eliminates the possibility that her early medical records were reviewed solely to determine whether Press was entitled to retroactive disability benefits, and the ALJ's consideration of Press's October 1988 vascular test discounts the possibility that her medical records were considered solely to determine whether Press was disabled more than two years later at the claimed disability onset date of December 31, 1990.

The defendant has not produced the filefolder from Press's first application for benefits, and therefore the details of this application, such as the claimed disability or the asserted disability onset date, are not clear to this court. However, it is clear that the disability onset date alleged in Press's first application, was sometime before August 20, 1990, the date that this initial application was filed. Thus, the disability onset date of Press's first application cannot be December 31, 1990, the date claimed in her second application.[6]

Defendant maintains that the dissimilarity in the claimed disability onset dates distinguishes *Coup* and *Purter*, the cases upon which Press relies to support her de facto reopening argument. However, I do not find that the difference between the disability onset dates claimed in Press's applications renders the *Coup* and *Heckler* precedents inapposite to Press's de facto reopening argument. Admittedly, in both these Third Circuit cases, the disability onset dates alleged in the claimant's earlier and later DIB applications were identical. *Purter*, 771 F.2d at 695;*Coup* , 834 F.2d at 316. The Third Circuit found this similarity of the claimed disability onset dates important because it demonstrated that the Secretary was on notice of the potential reopening issue presented by the claimant's second DIB application. *Coup*, 83 4 F.2d at 317-318; *Purter*, 771 F.2d at 695. These Third Circuit cases do not impose a formal requirement that the same disability onset date be claimed in a later DIB application for there to be a de facto reopening of an earlier claim. Thus, under *Coup* and *Purter*, as long as the ALJ had notice of the

[6] There is a reasonable explanation for the difference in the claimed disability onset dates. At the time Press filed her second application for benefits she was an unrepresented, indigent welfare recipient who was unaware of the judicially-created de facto reopening rule. Press most likely believed that her chances of success on her second DIB application improved by claiming a disability onset date after the period that had already been considered and rejected. This explains why, in her second application, Press alleged a disability onset date of December 31, 1990, one month after her first application for disability benefits was denied.

potential reopening issue, this court may find a de facto reopening of Press's earlier application even though this application does not claim the same disability onset date as her later application.

The ALJ's notice of the possible reopening issue raised by Press's second application is without doubt. In filing her second DIB application, Press alerted the ALJ that "a previous application [had] been filed with the Social Security Administration by or for me." This knowledge that Press had filed an earlier application was or at least should have been clear notice to the defendant, who as Commissioner of the Social Security Administration can be expected to have familiarity and experience with the reopening of old DIB claims. It is not important that Press did not use the precise words "reopening" in her second application, as there is no requirement that Press submit a formal petition to reopen her earlier-filed application for benefits. *Purter*, 771 F.2d at 695.

The ALJ was also explicitly notified of the reopening issue on September 27, 1995, when the form appointing Press's counsel was stamped "REOPENING." Additionally, a few days after the October 25, 1995 hearing on Press's second application and nearly two months prior to the issuance of the ALJ's decision, Press's counsel sent the ALJ a letter alerting him to the "potential reopening issue." Because the ALJ clearly was on notice that Press sought to reopen her earlier-filed claim for benefits, the Third Circuit de facto reopening precedents of *Coup* and *Purter* are apposite to Press's de facto reopening argument.

Moreover, Press's testimony at the October 25, 1995 may constructively amend the disability onset date alleged in her second application. Press testified that she had been suffering from Raynaud's Disease prior to December 31, 1990, and that on the advice of her doctor, she

had stopped working in May 1988. Tr. at 26. This testimony may establish that Press's claimed disability onset date in her second application was May 1988 and not December 31, 1990. As such, it is possible that the disability dates claimed in Press's two applications could in fact be the same since May 1988 precedes the filing of Press's first application.

C. Disconnect Between Press's First and Second DIB Applications

Press's second application claimed a disability onset date after Press's first application was denied. Defendant argues that this disconnect between Press's two applications makes it illogical to find that the ALJ, by reviewing Press's second application, reopened Press's earlier claim for benefits. Doc. 8 at 3.

Press testified that Raynaud's disease prevented her from working beginning in 1988. Based on this testimony it is likely that Press's 1990 application was based at least in part on her affliction with Raynaud's disease as was Press's later application.[7] That Press's affliction with Raynaud's Disease served as the foundation for both of her DIB applications demonstrates the clear nexus between Press's disability claims. Although there may be a disconnect as to the disability onset date alleged in Press's second application and the date her first application was denied, there is not such a disconnect as to the claimed disability underlying both applications. Thus, contrary to defendant's contention, it does not defy logic for this court to find that the

[7] Again, without the file from Press's initial DIB application this court cannot be certain of the disability alleged in Press's first application. Press, however, should not be disadvantaged because the defendant has misplaced or otherwise refused to provide the file from her earlier claim. In the absence of the file, fundamental fairness dictates that this court draw the logical conclusion from Press's testimony that her first application was based on her affliction with Raynaud's Disease.

ALJ's conduct at the hearing on Press's second DIB application amounted to a de facto reopening of Press's first DIB application.[8]

D. Time Limit for Reopening DIB Applications

Under the social security regulations a prior application may be reopened within twelve months of the date of notice of the initial determination for any reason or within four years of the date of notice of the initial determination for good cause.[9] 20 C.F.R. § 404.988. Defendant contends that because Press did not notify the Commissioner that she sought to reopen her earlier claim until after the four year time limitation had expired, the ALJ was without authority to reopen her application explicitly or constructively. Doc. 11 at 5-6.

Under Third Circuit precedent, the date that the Commissioner received notice that Press sought to reopen her prior application is irrelevant to the calculation of the reopening time limitation. Under the regulations, a claim may be reopened if the claimant's most recent application is filed within four years of the initial denial of the claimant's first application for benefits. *Coup*, 834 F.2d at 317; *Purter*, 771 F.2d at 692, n. 8. As Press filed her second application for benefits in February 1993, only two years and three months after her first

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[8] Defendant contends that Press "ignores the fact that the ALJ . . . did not find [her] to be disabled within a period previously adjudicated." Doc. 8 at 4. Although defendant is correct that Press did not discuss the denial of her first DIB application in her motion for summary judgment, the fact that Press's first application for benefits was denied is not relevant to her de facto reopening argument. The Third Circuit has found a de facto reopening of an earlier claim even when the claimant was initially denied benefits under that application. *Coup v Heckler*, 834 F.2d 313, 316 (3d Cir. 1987).

[9] The regulations also permit a reopening at any time if one of eleven specific conditions is met. 20 C.F.R. § 404.988(c). None of the eleven conditions are relevant to Press's claim for benefits.

application was denied, Press's second application was filed well within the four year limitation. Thus, the ALJ had authority to reopen Press's earlier disability claim.

II. Equitable Considerations

Pursuant to the social security regulations, a claimant is only entitled to benefits for the twelve months preceding the filing date of the DIB application, no matter what the determined onset date of the claimant's disability. 20 C.F.R. § 404.621(a)(1)(i). Thus, although the ALJ found Press disabled as of December 31, 1990, she is only entitled to receive disability benefits as of February 1992, twelve months prior to the date her second application was filed. However, if this court finds a de facto reopening of the first application, Press's entitlement to benefits would extend at least to the date her first application was filed, August 20, 1990, if not for the twelve months preceding that date. Because Press admits that it would be extremely difficult at this time without the record relating to Press's first application to prove her entitlement to disability benefits prior to December 31, 1990, Press does not seek to recover benefits prior to this date. Press only requests payment of retroactive disability benefits for the thirteen month period extending from December 31, 1990 through January 31, 1992. These benefits are currently being denied to Press since this period precedes the filing of her second application by more than twelve months.

The Third Circuit considers fairness and equity to be the hallmarks of the social security administrative process. *Purter*, 771 F.2d at 693. "Refusal to apply 'administrative' res judicata in a strictly technical fashion is consistent with this circuit's view that more significance should be placed on fairness in the administrative process than on the finality of administrative judgments."

Id. This circuit does not strictly apply the principles of res judicata to decisions of the Commissioner, but rather adheres to a flexible approach that is in accordance with the "beneficent purposes of the [Social Security] Act." *Id.* at 691. Allowing Press payment of retroactive disability benefits from December 31, 1990 to January 31, 1992, is certainly fair and equitable considering the ALJ's determination that Press was disabled as of December 31, 1990.

CONCLUSION

Fairness and equity aside, legal considerations instruct this court to find that the ALJ conducted a de facto reopening of Press's 1990 DIB application. At the time of the hearing on Press's 1993 DIB application, the ALJ had notice that Press's second application potentially reopened her earlier-filed claim. Despite this notice, the ALJ did not address the reopening issue at the administrative hearing or in his decision on Press's second application for benefits. In addition, although the ALJ reviewed Press's entire medical record in considering Press's 1993 DIB application, the ALJ failed to invoke administrative res judicata as to the period previously adjudicated in Press's first application. It is because of the ALJ's conduct that I will find a de facto reopening of Press's 1990 application for benefits. As a result, this action will be remanded to the Commissioner for a calculation of the benefits owed to Press solely for the period from December 31, 1990 to January 31, 1992.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORMA AVELLA PRESS Plaintiff,	:	
v.	:	CIVIL ACTION NO. 01-959
LARRY G. MASSANARI Commissioner of the Social Security Administration Defendant.	:	

ORDER

And now this ____ day of January, 2002, upon consideration of the parties' cross-motions for summary judgment (Doc. Nos. 5, 8), and plaintiff's reply (Doc. No. 10); and after review of the report and recommendation of the United States Magistrate Judge (Doc. No. 11), and plaintiff's objections thereto (Doc. No. 12), it is hereby ORDERED that:

1. There has been a de facto reopening of plaintiff's 1990 Disability Insurance Benefits claim;

2. The plaintiff's motion for summary judgment is GRANTED;

3. The defendant's motion for summary judgment is DENIED; and

4. This matter is REMANDED to the Commissioner for calculation of the retroactive benefits owed to plaintiff solely for the period from December 31, 1990 through January 31, 1992.

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William H. Yohn, Jr., Judge